

MOT

G. DALLAS HORTON & ASSOCIATES

G. DALLAS HORTON, ESQ.

Nevada Bar No. 5996

DAVID L. THOMAS, ESQ.

Nevada Bar No. 3172

CHRISTIAN Z. SMITH, ESQ.

Nevada Bar No. 8266

4435 South Eastern Avenue

Las Vegas, Nevada 89119

(702) 380-3100

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KAYLEEN SHAKESPEAR,)	CASE NO. 2:12-cv-01064-MMD-PAL
)	
Plaintiff,)	PLAINTIFF KAYLEEN SHAKESPEAR'S
v.)	MOTION IN LIMINIE TO PRECLUDE
)	ATTORNEY MISCONDUCT
WAL-MART STORES, INC., LLC, a)	
Foreign Corporation d/b/a WAL-MART)	
SOTRE #2837; and DOE EMPLOYEE;)	
DOE SUPERVISOR; DOES I through X;)	
and ROE CORPORATIONS I through X,)	
inclusive,)	
)	
Defendants.)	

COMES NOW, Plaintiff KAYLEEN SHAKESPEAR ("Ms. Shakespear") by and through her attorneys of record, G. DALLAS HORTON & ASSOCIATES and hereby move this Honorable Court to preclude attorney misconduct under *Lioce v. Cohen* during the trial.

...

...

...

...

1 This Motion is made and based upon the Memorandum of Points and Authorities attached
2 hereto, together with the papers and pleadings on file herein, and any oral argument allowed by
3 this Court at the time of hearing.

4
5 DATED this 18 day of August, 2014.

6 G. DALLAS HORTON & ASSOCIATES

7
8 

9 G. DALLAS HORTON, ESQ.

10 Nevada Bar No. 5996

11 DAVID L. THOMAS, ESQ.

12 Nevada Bar No. 3172

13 CHRISTIAN Z. SMITH, ESQ.

14 Nevada Bar No. 8266

15 4435 South Eastern Avenue

16 Las Vegas, Nevada 89119

17 (702) 380-3100

18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **FACTS**

4 This lawsuit arises from a slip and fall incident that occurred on August 5, 2011 at
5 Defendant, WAL-MART STORES, INC.'S Store #2837 (hereinafter referred to as "Wal-Mart").
6 On this date, Ms. Shakespear, who was going on a trip to Utah with her daughter, went into Wal-
7 Mart to purchase items for the trip. Ms. Shakespear, while walking in the area of the produce
8 department near the first frozen food aisle, slipped and fell on a cherry pit causing her to sustain
9 personal injuries.
10

11 **II.**

12 **LEGAL ARGUMENT**

13
14 The Nevada Supreme Court in the consolidated appeals decision of *Lioce v. Cohen*, 122
15 *Nev. Adv. Opp. 115 (2006)* has clarified what constitutes such prejudicial attorney misconduct
16 during the course of a jury trial in Nevada. This Motion in Limine seeks to preclude attorneys
17 representing Defendants in this case from committing such misconduct during the course of jury
18 voir dire, opening argument, presentation of exhibits, questioning of witnesses and parties, and
19 closing argument of these proceedings. To the extent that such misconduct was described by the
20 Nevada Supreme Court within the *Lioce, supra* decision, it is respectfully requested that this Court
21 preclude not only the aforementioned issues, but any of the following issues and/or arguments
22 from being presented at any time during this case:
23

24 ...

25 ...

26 ...

1 **1. Jury Nullification and Arguments and Statements.**

2
3 The Nevada Supreme Court in *Lioce v. Cohen* defined jury nullification as:

4 “A jury’s knowing and deliberate rejection of the evidence
5 or refusal to apply the law either because jury wants to send a
6 message about some social issue that is larger than the case
7 itself or because the result dictated by laws contrary to the
8 jury’s sense of justice, morality and fairness.” See *Lioce*,
 supra, 122 Nev. Adv. Opp. At p. 24 citing *Blacks Law*
 Dictionary 875 (8th Ed. 2004).

9 The Court in *Lioce* used several examples of attorney arguments that would result in such
10 jury nullification. The examples specified by the Nevada Supreme Court in *Lioce* concerned an
11 attorney arguing that the case “wasted taxpayer money and jurors’ time”, that the case was an
12 example of people “looking for an excuse to sue someone at the drop of a hat”, that “Americans
13 have become a society of blamers”, and that the offending attorney making such prejudicial
14 remarks was doing so to have the jury “send a message” regarding “frivolous lawsuits”. The
15 Court in *Lioce* found all of these arguments were directed at causing the jurors to harbor disdain
16 for the civil jury process and purposely perpetuated misconceptions that personal injury cases are
17 unfounded and brought in bad faith by unscrupulous lawyers. The Nevada Supreme Court has
18 found that these arguments were irrelevant to the cases at hand and improper in a Court of law and
19 constituted a clear attempt at jury nullification.
20
21

22 Based upon the Court’s decision in *Lioce v. Cohen*, it is respectfully requested that this
23 Court preclude Defendants or their counsel from arguing or mentioning that Ms. Shakespear is
24 somehow involved in a frivolous lawsuit or engaging in fraud. Additionally, counsel must not
25 mention inappropriate policy issues or concepts which are clearly designed to have the jury
26 disregard the facts of this case and the law that would apply to their verdict. Thus, the attorneys
27 for Defendants should specifically be precluded from arguing that: a) the Ms. Shakespear’s case is
28

1 frivolous; b) that the attorneys representing Ms. Shakespear are unscrupulous; c) that the jury
2 should send a message regarding frivolous lawsuits; d) that Americans have become a society of
3 blamers and sue people at the drop of a hat; e) and that personal injury cases, or that this case, is a
4 waste of taxpayer money and jurors' time.

5
6 It is further requested that this Court preclude Defendants' attorneys from attempting to
7 argue any related policies or theories regarding America being a litigious society, or that personal
8 injury cases are frivolous, or that there are too many personal injury lawsuits filed.

9
10 **2. Statements of Personal Opinion.**

11 The *Lioce v. Cohen* decision also held that it was a violation of the Nevada Rules of
12 Professional Conduct for an attorney to state to the jury a personal opinion as to his involvement in
13 the case, of the justness of a cause, the credibility of a witness, or the culpability of a litigant. See,
14 Nevada Rules of Professional Conduct (RPC) 3.1(e).

15 The Court found that it was a violation of the Nevada Rules of Professional Conduct for an
16 attorney to state that he had a "real passion for this case and cases like these", or that these were
17 "the types of cases that caused people to be distrustful of lawyers and legitimate Plaintiffs". The
18 Nevada Supreme Court fiercely rebuked making such comments which resulted in the offending
19 attorney in *Lioce v. Cohen* being referred to the State Bar for disciplinary proceedings for such
20 misconduct.
21

22
23 It is therefore requested that this Court preclude the attorneys for Defendants from
24 injecting their personal opinion that Ms. Shakespear's case is worthless, without merit or by
25 stating their personal opinion as to their feelings concerning their clients (the Defendants) or the
26 defenses that their clients may have available on this case. The *Lioce v. Cohen* decision clearly
27
28

1 stated that such arguments are not only a violation of the ethical duties of an attorney, but also are
2 a blatant attempt to prejudice the jury against Ms. Loving.

3 The Court also stated that, by injecting any attorney's personal opinion that plaintiffs'
4 cases are worthless or frivolous or a cause of some other ills of society, amounted to jury
5 nullification, since the attorney was attempting to have the jury accept his personal opinion of a
6 public policy debate as a substitute for the evidence and law that should decide the case. See
7 *Lioce, supra*, 122 Nev. Adv. Opp. 115 at p. 27, footnote 36.
8

9
10 **3. Golden Rule Argument.**

11 The Nevada Supreme Court in *Lioce v. Cohen* also clarified the use of the Golden Rule
12 Argument in personal injury trials. The Court defined a Golden Rule Argument as an attorney
13 asking jurors to place themselves into the position of one of the parties. Golden Rule Arguments
14 are improper, since they infect the jury's objectivity. See *Boyd v. Pernicano*, 79 Nev. 356, 358,
15 385, P.2d at 343 (1963). The Court in *Lioce* stated that, by inviting the jury to make a decision as
16 if they or their children were involved in any hypothetical situation, especially when it parallels
17 the facts of the case they are deciding, is a purposeful attempt "designed to trivialize... injuries
18 instead of deciding the case on negligence law and the evidence that the (parties) presented". See
19 *Lioce, supra*, 122 Nev. Adv. Opp. 115 at p. 28 (clarification added).
20

21 It is respectfully requested that this Court preclude the attorneys for Defendants from
22 making any arguments which attempt to place the jurors into the position of one of the parties,
23 whether it either be using the facts of this case or using any other factually similar hypothetical
24 situation, since the Nevada Supreme Court has clearly ruled that such comments amount to an
25 impermissible Golden Rule Argument.
26

27 ...
28


III.

CONCLUSION

Therefore, it is respectfully requested that this Court preclude the attorneys for Defendants from committing any of the misconduct that was specified within the *Lioce v. Cohen* decision, including but not limited to: 1) references that Ms. Shakespear's claim is frivolous or worthless, anything about public policy debates regarding lawsuits, frivolous personal injury cases, litigious society and/or any other factors which would cause the jury to ignore the facts of the case and the law the jury is to apply in rendering a verdict; 2) personal opinions of the attorneys representing Defendants about anything having to do with the justness or appropriateness or their defense of the case of their clients or their personal opinions about Ms. Shakespear, her health care providers or their case in general; and 3) any Golden Rule Arguments that the attorney for Defendants may attempt to assert by asking jurors to place themselves in the position of one of the parties, which is improper since the utilization of such scenarios is purposely designed to corrupt the objectivity of the jurors.

DATED this 18 day of August, 2014.

G. DALLAS HORTON & ASSOCIATES

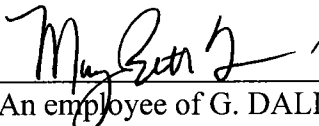

G. DALLAS HORTON, ESQ.
Nevada Bar No. 5996
DAVID L. THOMAS, ESQ.
Nevada Bar No. 3172
CHRISTIAN Z. SMITH, ESQ.
Nevada Bar No. 8266
4435 South Eastern Avenue
Las Vegas, Nevada 89119
(702) 380-3100
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document entitled **PLAINTIFF KAYLEEN SHAKESPEAR'S MOTION IN LIMINIE TO PRECLUDE ATTORNEY MISCONDUCT** has been served upon all counsel of record by using the United States District Court, District of Nevada's Case Management/Electronic Case Filing System that will electronically mail notification to the following counsel of record:

Brenda H. Entzminger, Esq.
PHILLIPS, SPALLAS & ANGSTADT LLC
504 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Defendant

DATED this 19th day of August, 2014.


An employee of G. DALLAS HORTON & ASSOCIATES